



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 29, 2022

IN THE MATTER OF:

Appeal Board No. 623313

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board No. 623313, the claimant appeals from the decision of the Administrative Law Judge filed April 20, 2022, which sustained the initial determination holding the claimant ineligible to receive benefits, effective March 23, 2020 through July 31, 2020, on the basis that the claimant did not comply with reporting requirements.

In Appeal Board Nos. 623314 and 623315, the claimant appeals from the decisions of the Administrative Law Judge filed April 20, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective April 5, 2020 through May 17, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and reducing the claimant's right to receive future benefits by 80 effective days on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 623316, 623317, and 623318, the claimant appeals from the decisions of the Administrative Law Judge filed April 20, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 23, 2020 through July 31, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$3,227.00 in benefits

recoverable pursuant to Labor Law § 597 (4), and \$4,200.00 in Federal Pandemic

Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2)

of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$1,114.05 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked as executive director of a public advocacy organization that encourages male participation in family planning. The claimant was based in New York, where he had his office, and he traveled throughout the world for his work.

On March 5, 2020, the claimant traveled to Ecuador. He spent a week in Ecuador, meeting with the Ministry of Health and a local family planning organization, and overseeing a training session with doctors. He then planned to travel to Peru for another nine days of work and then go to Colombia for additional meetings before returning to the United States on March 27. The entire trip was for work.

The claimant arrived in Peru on March 13. Within 48 hours of his arrival, the President of Peru declared a state of emergency because of the onset of the COVID-19 pandemic. Peru closed its borders, and all flights out of the country were canceled. The claimant's work assignment was canceled by the organization that was hosting him, and the employer's primary sponsor pulled out from sponsoring the employer effective April 1, leaving the employer with no money to pay him.

While in Peru, the claimant tried to file an unemployment insurance claim online in late March 2020. His internet access was extremely poor, especially because internet usage increased with the onset of the pandemic. For a period of approximately nine weeks, he had no internet access at all. The Department of Labor's records show that the claimant filed his claim on May 1, 2020, effective March 23, 2020. The claimant did not receive a Claimant Information Handbook and was not aware that the handbook existed or that it was available online, and he also was unable to use the internet to get online. The claimant was not aware of the information in the handbook that he could not claim

benefits from outside the U.S., Canada, Puerto Rico and the Virgin Islands, could not have someone certify on his behalf while he was out of the country, or report that he was available to work when he was not able or available to accept work immediately, or that he should not claim to be available for work while out of the country.

The claimant did not look for work in the United States while he was in Peru because he had no way of getting to the United States. The claimant was not authorized to work in Peru. As a media person, he could have gotten a media permit that would authorize him to engage in certain types of work. He looked for work in Peru, especially in film-making, as there were opportunities to participate in making films about COVID, but he did not have the right equipment and did not get hired.

The claimant was in an isolated area of Peru until late May or early June, when he relocated to a bigger city. Also in late May or early June, he was able to get on the internet again. At this point, he logged in again and filled out an Out-of-Country Questionnaire. He was not blocked from accessing the Department of Labor's website. He did not circumvent the Department of Labor's system. He completed the Out-of-Country Questionnaire on May 27, 2020 and reported that he had traveled to Ecuador and Peru and had not yet returned home.

On June 8, 2020, the claimant filled out an online form that asked him to certify "I was eligible" or "I was not eligible" for benefits for each of the weeks from the week ending March 29, 2020 through the week ending

May 31, 2020. He filled out this form on the Department of Labor's website. The form explained that "I was eligible" meant that, among other things, "I was ready, willing, and able to work." The form also stated that, in addition, "you are certifying ... that you are not claiming benefits for any period during which you were outside of the United States, a U.S. Territory or Canada." For each of the weeks at issue, the claimant certified "I was eligible." In filling out this form, he did not read the portion of the form that said, "In addition, you are certifying ... that you are not claiming benefits for any period during which you were outside of the United States, a U.S. Territory or Canada." The claimant believed he was available for work in Peru, as he would have accepted work in Peru if he could find any. He believed he could obtain media permission from a relevant local government office. The claimant received \$3,227.00 in regular benefits and \$4,200.00 in FPUC

benefits. The claimant returned to the United States on July 31, 2020.

OPINION: The credible evidence establishes that the claimant was in Peru from the effective date of his claim, March 23, 2020, through July 31, 2020, when he returned to the United States. As a matter of law, a claimant who is not present in a jurisdiction that is a signatory to the Interstate Benefit Payment Plan ("IBPP") is not able to comply with reporting requirements (see, e.g., Appeal Board No. 612495). Peru is not a signatory to the IBPP. Therefore, the claimant was unable to comply with reporting requirements while in Peru (see Matter of Mikheil, 2022 N.Y. App. Div. LEXIS 3984 [3d Dept June 23, 2022]). Further, the claimant has not shown good cause to excuse this failure to comply (see Matter of Inatomi, 116 AD3d 1332 [3d Dept 2014]). Accordingly, we conclude that the claimant is ineligible for benefits, on the basis of failure to comply with reporting requirements, from March 23, 2020 through July 31, 2020.

The credible evidence further establishes that the claimant's certifications from Peru were submitted on a single online form on June 8, 2020. The claimant was not blocked from accessing the Department of Labor's website, and he did not circumvent the Department of Labor's system. Accordingly, we further conclude that the claimant did not fail to comply with the Department of Labor's certification requirements.

The credible evidence further establishes that, on June 8, 2020, the claimant completed an online form in which he certified that he was eligible for benefits each week from the week ending March 29, 2020 through the week ending May 31, 2020. The form stated that, in certifying that he was eligible for benefits, the claimant would be certifying that he was not claiming benefits for any period during which he was outside of the United States, a U.S. Territory or Canada. The claimant's certification that he was eligible for benefits with respect to each of these weeks, even though he was in Peru the entire time and not in the United States, a U.S. Territory or Canada, constitutes a knowingly false certification. Accordingly, we further conclude that, for purposes of the Unemployment Insurance Law, the claimant's certifications constitute willful misrepresentations, and the claimant is subject to a forfeiture penalty of 80 effective days.

The credible evidence further establishes that, during the period that the claimant was in Peru, he did not apply for jobs in the United States because he had no way of getting to the United States. Thus, the claimant was not

ready, willing, and able to accept work in the United States or Canada immediately. We are not persuaded by the claimant's contention that he was looking for work in Peru, as he was not authorized to work in Peru, and he was unable to obtain work as a film-maker because he did not have the right equipment. Accordingly, we conclude that the claimant was ineligible for benefits, on the basis that he was not available for employment, while in Peru.

The credible evidence further establishes that, in certifying on the online form on June 8, 2020, that he was eligible for benefits each week, the claimant was certifying that, among other things, he was ready, willing

and able to work. The claimant received \$3,227.00 in regular benefits and \$4,200.00 in FPUC benefits. Nothing in the record indicates that the claimant was on notice that he would not be considered "ready, willing, and able to work" for purposes of the Unemployment Insurance Law, as the claimant did not receive the Claimant Information Handbook. Therefore, his incorrect certifications reflect an error of law and were not factually false statements. Accordingly, we further conclude that the regular unemployment benefits that the claimant received are non-recoverable. As the claimant was ineligible for benefits, however, the FPUC benefits are recoverable pursuant to federal law. We further conclude that, because the claimant's certifications to

being ready, willing, and able to work were not factually false, the claimant is not subject to an 8-day forfeiture penalty or a civil monetary penalty.

**DECISION:** The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board No. 623313, the initial determination, holding the claimant ineligible to receive benefits, effective March 23, 2020 through July 31, 2020, on the basis that the claimant did not comply with reporting requirements, is sustained.

In Appeal Board No. 623314, the initial determination, holding the claimant ineligible to receive benefits, effective April 5, 2020 through May 17, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification, is overruled.

In Appeal Board No. 623315, the initial determination, reducing the claimant's

right to receive future benefits by 80 effective days on the basis that the claimant made willful misrepresentations to obtain benefits, is sustained.

In Appeal Board No. 623316, the initial determination, holding the claimant ineligible to receive benefits, effective March 23, 2020 through July 31, 2020, on the basis that the claimant was not available for employment, is sustained.

In Appeal Board No. 623317, the initial determination, charging the claimant with an overpayment of \$3,227.00 in benefits recoverable pursuant to Labor Law § 597 (4), and \$4,200.00 in Federal Pandemic Unemployment Compensation (FPUC)

benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief,

and Economic Security (CARES) Act of 2020, is modified to hold the regular unemployment benefits non-recoverable, and, as so modified, is sustained.

In Appeal Board No. 623318, the initial determination, reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$1,114.05 on the basis that the claimant made willful misrepresentations to obtain benefits, is overruled.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER